

## **REMARKS**

The Examiner's Office Action mailed October 26, 2009, which rejected all pending claims, has been reviewed. Reconsideration in view of the foregoing amendments and remarks is respectfully requested. Moreover, Applicants have reviewed the Office Action of October 26, 2009, and submit that the following amendments and remarks are responsive to all points raised therein. Applicants believe that currently pending claims 1-5 and 7-10 are now in form for allowance.

### **Status of Claims**

Claims 1-5 and 7-10 are pending in the application. Claim 6 has been withdrawn. Claim 1 has been amended to exclude starch from the formulation. Support for the amendment can be found, for example, in the examples of the specification. No new matter has been added.

### **Restriction Requirement**

Applicants hereby confirm the election to prosecute the claims drawn to compounds of Formula (I). This election is represented by claims 5, 7, and 8. Applicants reserve the right to file divisional applications directed to the subject matter of the non-elected claims.

### **Rejection of Claims 1-5 and 7-10 under 35 USC § 103(a)**

Reconsideration is requested of the rejection of claims 1-5 and 7-10 under §103(a) as being unpatentable over Kalbe et al. (CA 2413698).

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734, 82 USPQ2d 1385, 1391 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any

differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). See also *KSR*, 127 S.Ct. at 1734, 82 USPQ2d at 1391 ("While the sequence of these questions might be recorded in any particular case, the [Graham] factors continue to define the inquiry that controls.")

The present invention is directed to a solid pharmaceutical formulation that includes a quinolone antibiotic, 4 to 20 % by weight of a flavoring which is a mixture of proteins, fats, and carbohydrates, and, at least 1.5% to 15% by weight of colloidal silicon dioxide based on the total weight of the finished formulation. The ratio by weight of colloidal silicon dioxide to flavoring is 1:4 to 1:1. The formulation excludes starch.

Kalbe et al. teach a starch-based extruded formulation to be administered orally and which is accepted readily by animals.

Amended claim 1 excludes starch from the formulation, as such Kalbe et al.'s starch formulation can not render claim 1 obvious. Applicants request that the present rejection to claim 1 be withdrawn. Claims 2-5 and 7-10, directly or indirectly, depend from claim 1, and as such Applicants request withdrawal of the present rejection with respect to claims 2-5 and 7-10 as well.

#### Rejection of Claims 1 and 4 under 35 USC § 103(a)

Reconsideration is requested of the rejection of claims 1 and 4 under §103(a) as being unpatentable over Demuth, Jr. et al. (US 5,328,908) in view of Kalbe et al. (CA 2413698).

Demuth et al. teach antimicrobial compounds and compositions. Similarly to Kalbe et al., however, Demuth et al. teach a starch based composition.

Amended claim 1 excludes starch from the formulation, as such neither Kalbe et al.'s nor Demuth et al.'s formulations alone or when combined can not render claim 1 obvious. Applicants request that the present rejection to claim 1 be withdrawn. Claim 4, directly or indirectly, depends from claim 1, and as such

Applicants request withdrawal of the present rejection with respect to claim 4 as well.

Conclusion

Applicants respectfully submit that the pending claims are now in form for allowance.

The Commissioner is hereby authorized to charge any fee deficiency or credit any overpayment in connection with this amendment to Deposit Account No. 50-4260.

Respectfully submitted,

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